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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,314	12/23/2004	Marcus Guzmann	102792-390(11051O4)	9126

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EXAMINER	
DOUYON, LORNA M	
ART UNIT	**PAPER NUMBER**
1751	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/519,314	GUZMANN ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 December 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *12/23/04; 2/11/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

1. Claims 5, 12, 16-21, 23, 25, 31 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is indefinite because it is not clear whether the terms inside the parentheses (see lines 1 and 2) are part of the claim limitation or not.

Claim 12 lacks support for "the migration speed" (see line 2) with respect to claim 9.

In claims 16-18, the proportion of the water lacks "by weight" or otherwise. In addition, the dependency of claim 17 is missing. (For prior art purposes, this claim is presumably dependent from claim 1).

Claim 19, being dependent upon claim 18, is rejected as well.

Claim 20 lacks support for "the detergent active" with respect to claim 11. Could it be that this claim depends from claim 9?

Claim 21 lacks support for "the enzyme" (see line 2) with respect to claim 1.

In claims 23 and 25, the proportion of the encapsulating agent lacks "by weight" or otherwise.

In claim 31, the proportion of the primary particles lacks "by weight" or otherwise.

Claim 34 is indefinite in the recital of "the use of..." in line 2 because it does not recite a positive step limitation.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-6, 8, 11, 12, 13, 15, 17, 29-31 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Roberts et al. (US Patent No. 3,728,446), hereinafter "Roberts".

Roberts teaches a dentrifice gel which includes esthetically pleasingly colored particles (see col. 1, lines 4-6), which may be translucent, transparent, as well as opaque (see col. 2, lines 1-2). Opaque vehicles typically contain about 10-30 percent by weight of water (see col. 2, lines 22-24). In accordance with this invention, particles are formed in the oral preparation which are already colored at their time of formation or are suitable for being colored by incorporating a water-soluble polyvalent metal salt of hydroxide, such as aluminum sulfate and the like, in a gelled dentifrice vehicle thereby forming particles which are the reaction product of the metal of the salt or the hydroxide with alkali metal carboxymethyl cellulose (see col. 2, lines 44-57). The amount of soluble polyvalent metal ion remaining after reaction as alkali metal carboxymethyl cellulose is minimal (see col. 1, lines 35-39) (which would read on at least 0.3 wt% of claim 11). If the water-soluble polyvalent metal salt or hydroxide is not dyed at the time it is incorporated into the gelled dentifrice to form impalpable water-insoluble particles such as particles of aluminum carboxymethyl cellulose, then a gelled vehicle which has been previously dyed can be employed, and the dye in the gelled vehicle is absorbed on the substrate of water-insoluble particles thereby creating a speckled effect. The color of the particles dyed in this manner is a deeper color than that of the surrounding gel and thus desirable visual contrast is obtained. Moreover, since the absorbed dye on the particles is substantive, the gelled vehicle can be again dyed to modify its color and

increase contrast with the particles which are not themselves further dyed (see col. 3, lines 7-22). If desired, the salts or hydroxides which are to be contacted with the gelled vehicles may be colored various colors and the dentifrice gel vehicle may also be dyed, thus permitting formation of a toothpaste which has multi-contrasting colors with an irridescent beaded effect (see col. 3, lines 39-44). When the particles are aluminum carboxymethyl cellulose, they are typically about 0.1-1.5 mm in size and are generally oval in shape. When they are formed in the gelled vehicle in which polishing agent, flavor and other components have been previously incorporated, they are generally about 0.3-1.5 mm in size. When they are formed in the gelled vehicle prior to addition of further components to the vehicle they are generally reduced in size during milling with the remaining components and may then be about 0.1-1 mm in size (see col. 3, line 60 to col. 4, line 3). Even though Roberts does not explicitly disclose the interaction of the radiation emitted by the gel and particles forming a third or fourth color, it would be inherent for the gel and particles to exhibit the same characteristics because same ingredients have been utilized. In addition, the transmittance, migration speed, viscosity and density of the gel composition would inherently be the same as those recited, considering the gel nature of the composition, and the presence of the speckled particles. Even assuming the teachings of Roberts are not sufficient to anticipate the claims, it would have been nonetheless obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the dentrifice gel of Roberts to exhibit similar, if not the same, characteristics as those recited because similar ingredients have been utilized.

6. Claims 1-16, 20-22, 24, 26-32 and 34 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Smerznak et al. (WO 99/00477), hereinafter "Smerznak".

Smerznak teaches a non-aqueous, particulate-containing liquid laundry detergent compositions which are in the form of a suspension of particulate material, essentially including colored speckles and preferably including peroxygen bleaching agent and an organic detergent builder, dispersed in a liquid phase preferably structured with a surfactant (see abstract). The speckles range in particle size to about 400 to 1500 microns and have a density less than about 1.4 g/cc, and the speckles comprise dye or pigment material in combination with a carrier which can be polyethyleneglycol (reads on plasticizer), polyacrylate or a polysaccharide (see page 2, lines 23-26) such as celluloses (see page 12, lines . Additional insoluble particulate material is also preferably suspended in the surfactant-containing liquid phase, wherein the particulate material can include peroxygen bleaching agents, bleach activators, organic detergent builders and inorganic alkalinity sources, having a size in the range from about 0.1 to 1500 microns (se page 2, last full paragraph). The additional solid phase particulate material which is dispersed and suspended within the liquid phase comprises from about 1% to 50% by weight (see page 13, lines 1-4). The preferred particulate material is a peroxygen bleaching agent which is coated with silicate, borate, sulfate or water-soluble surfactants (see page 13+). The composition can also include microencapsulated enzymes (see page 18, lines 4). The detergent composition may

also optionally contain a polymeric material which serves to enhance the stability of the composition, and may thus act as thickeners, viscosity control agents and/or dispersing agents, for example, polymeric polycarboxylates like polyacrylates (see page 19 line 15 to page 20, line 4). The water content of the non-aqueous detergent composition is less than about 1% by weight, and the viscosity of the compositions ranges from about 300 to 5,000 cps (see page 22, lines 7-14). The compositions can be used to form aqueous solutions for use in the laundering and bleaching of fabrics (see page 24, lines 14-15). In Table II, Smerznak teaches a stable, anhydrous heavy-duty liquid laundry detergent which has pleasing blue speckles suspended throughout a generally opaque liquid composition (see entire page 28). Even though Smerznak does not explicitly disclose the interaction of the radiation emitted by the structured composition and colored speckles forming a third or fourth color, it would be inherent for the structured composition and speckles to exhibit the same characteristics because same ingredients have been utilized. In addition, the transmittance of the composition and migration speed of the speckles in the structured composition would inherently be the same as those recited, considering the viscous nature of the composition, and the presence of the colored speckles. Even assuming the teachings of Roberts are not sufficient to anticipate the claims, it would have been nonetheless obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the structured composition of Smerznak to exhibit similar, if not the same, characteristics as those recited because similar ingredients have been utilized.

7. Claims 18-19, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smerznak as applied to the above claims.

Smerznak teaches the features as described above. In addition, Smerznak teaches that the bleaching agents comprise from about 1% to 30% by weight of the composition (see page 15, first full paragraph); organic builder salts, like alkali metal citrates, in amounts from about 2 to 20% by weight of the composition (see page 15, last paragraph to page 16, line 19); inorganic alkalinity salts in amounts from about 1% to 25% by weight of the composition (see page 16, line 20 to page 17, line 9); and inorganic detergent builders in amounts from about 2 to 15% by weight of the composition (see page 17, lines 18-28). Smerznak also teaches coated percarbonate and microencapsulated enzymes (see page 13, last two lines; page 14, lines 1-2; and page 18, lines 4-5). Smerznak, however, fails to disclose the composition having a salt content of at least 70% and wherein the salt comprises phosphate, citrate or sulphate; and the proportions of the encapsulating agent with respect to the particles.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of the salt and the encapsulating agent through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima *facie* case of obviousness. See In re *Boesch, 617* F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodrufl*

919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. *Cir.* 1990), and *In re Aller,* 220 F2d 454,456,105 USPQ 233,235 (CCPA 1955).

8. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smerznak as applied to the above claims, and further in view of Fonsny (US 4,846,992).

Smerznak teaches the features as described above. Smerznak, however, fails to disclose the composition in a pouch of polyvinylalcohol.

Fonsny teaches a similar composition which is gel-like (see abstract and col. 15, lines 15-20) and which is packaged in pre-measured dosage forms for single use in pouches formed from water soluble materials such as polyvinyl alcohol (see col. 16, lines 3-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to package the composition of Smerznak in a pouch made from polyvinyl alcohol because it is known from Fonsny that a similar composition can be packaged in pre-measured dosage forms in pouches formed from water soluble materials such as polyvinyl alcohol for ease in dispensing.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M. Douyon/
Primary Examiner
Art Unit 1751